

California Department of Insurance

JANUARY 2002

(Updated from February 2001)

The Federal 1999 GRAMM-LEACH-BLILEY ACT



Harry W. Low
Insurance Commissioner
JANUARY 2002

DEPARTMENT OF INSURANCE

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January 2002

Thank you for your interest in the California Department of Insurance's (CDI) activities and work product since the enactment of the federal Gramm-Leach-Bliley Act of 1999 (GLBA). Over the last two years, our Department has invested substantial time and resources to the study of GLBA, from legal analysis of new regulatory requirements, to policy deliberation conducted by the National Association of Insurance Commissioners (NAIC) with other state and applicable federal regulators.

This is the third of our Department's reports on GLBA activities. The first was released in November 2000, and the second on February 2001. In 2002, newly elected NAIC President and Iowa Insurance Commissioner Therese Vaughan will unveil her plans for the NAIC GLBA Working Groups. Please recognize that the organizational activities, regulatory dialogue, legal and legislative actions, policy direction and NAIC resolutions regarding GLBA are very dynamic, and that this report provides a snapshot of information available at this point in time.

We have assigned some of our most experienced and nationally respected deputy commissioners, attorneys, and policy administrators to evaluate the implications of GLBA on state insurance regulation. Throughout my administration, I have received briefings from my GLBA leadership team and met with federal regulators on policy and program matters of mutual concern. I believe it is important to share with you our general policy direction and concerns about GLBA which are contained in this update report.

Participation in the NAIC's GLBA activities is a significant workload for our Department. The Department's policy direction – while actively participating in the NAIC's GLBA Working Groups – has stayed focused on the important protections that California insurance law provides consumers. The California Department of Insurance will work diligently to maintain the strong consumer protections that come by way of our current agent and broker licensure requirements. California must also take into consideration the inherent limitations set forth in Proposition 103 when working with rate filing reforms. To ensure that the privacy regulations for both health and financial information comply with California law and GLBA, a regulatory package was proposed and released in December 2001. A policy direction that enhances licensing requirements for agents/brokers to include a national criminal history background clearance as of January 1, 2002 has also been established. There are other critical policy choices within GLBA that we will continue to assess and address at appropriate opportunities.

We hope you will take a few moments to review this report about our Department's efforts to effectively administer the provisions of the 1999 federal financial services modernization law.

HARRY W. LOW
Insurance Commissioner

GLBA COMMUNICATIONS CONTACT INFORMATION

January 2002

The 1999 Gramm-Leach-Bliley Act (GLBA) federal financial modernization law represented a major policy shift in our nation's economic and financial institution regulatory structures. The GLBA has proven to be as complex as it is important. California will continue our active participation and leadership with all of the National Association of Insurance Commissioners (NAIC) Working Groups, and on the implementation of the law.

To enhance our Department's ability to effectively coordinate and broadcast information about our GLBA Working Group activities, I have directed that the information in this report be posted on our CDI Internet website at www.insurance.ca.gov.

Our GLBA Internet website contains an eMailbox specifically constructed for GLBA issues which is monitored daily by staff within our Strategic Planning, Policy and Research Branch. This office is responsible for ensuring that your questions or concerns receive prompt attention from our Department's Working Group experts, and coordinating this effort with our NAIC activity.

We welcome correspondence by U.S. Postal or other vendor services to our office:

California Department of Insurance
300 South Spring Street, South Tower
Los Angeles, CA 90013

If you would like to speak with our GLBA office, please call (916) 492-3595.

I welcome your thoughts and comments on our work to implement the provisions of the Gramm-Leach-Bliley law.

HARRY W. LOW
Insurance Commissioner



California Department of Insurance

GRAMM-LEACH-BLILEY ACT (GLBA)

California Department of Insurance Leaders Assigned to Participate in the National Association of Insurance Commissioner's GLBA Working Groups

www.insurance.ca.gov

January 2002

Working Group and CDI Staff	Branch	E-mail	Phone No.
Coordinated Advertising Rate and Form Review Authority (CARFRA) Reid McClaran, Deputy Chief Counsel Sheldon Summers, Bureau Chief	Legal Financial Surveillance	Mcclaranr@insurance.ca.gov Summerss@insurance.ca.gov	(415) 538-4113 (213) 346-6151
Consumer Protections Jim Johnson, Deputy Commissioner Joel Laucher, Bureau Chief	Consumer Services and Market Conduct Consumer Services Division	Johnsonj@insurance.ca.gov Laucherj@insurance.ca.gov	(213) 346-6345 (415) 538-4381
Coordinating with Federal Regulators Norris Clark, Deputy Commissioner Elizabeth Mohr, Bureau Chief	Financial Surveillance Legal	Clarkn@insurance.ca.gov Mohre@insurance.ca.gov	(213) 346-6401 (415) 538-4112
Functional Regulation Lorraine Johnson, Bureau Chief, Conservation and Liquidation	Legal	Johnsonl@insurance.ca.gov	(415) 538-4405
National Association of Registered Agents and Brokers (NARAB) Loren Suter, Deputy Commissioner Dennis Ward, Chief, Producer Licensing	Administration and Licensing Services	Suterl@insurance.ca.gov Wardd@insurance.ca.gov	(916) 492-3576 (415) 538-4367
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CALIFORNIA DEPARTMENT OF INSURANCE **POLICY STATEMENT**

January 2002

The California Department of Insurance (CDI) supports the efforts of the National Association of Insurance Commissioners (NAIC) to facilitate the implementation of the Gramm-Leach-Bliley Act (GLBA) and to establish regulatory priorities reflecting the emerging global financial marketplace.

CDI is a member of, and will actively participate in, the NAIC's GLBA Working Groups. Our goals are to eliminate irrelevant and unnecessarily burdensome regulatory requirements, identify and accomplish needed reforms, and adopt uniform standards and/or reciprocal agreements with other regulators wherever appropriate.

California has the largest insurance market in the United States. Our staff has achieved high standards for insurance regulation and consumer protection, and those standards will not be sacrificed in the name of greater market convenience and business licensing procedure. At the same time, we realize that both consumers and insurers benefit from a streamlined and responsive regulatory system that delivers lower-priced products, enhanced insurer stability, expanded education about insurance products, and swift and effective enforcement activities.

Cognizant of our entry into an age of vastly expanded interstate mobility and electronic commerce that seamlessly crosses jurisdictional boundaries, we must continue to seek new methods to achieve our regulatory goals, streamline processes wherever possible, and work with other States -- especially other large States -- to ensure that our common concerns are effectively addressed.

The California Department of Insurance believes that both high standards and greater uniformity among the fifty five insurance state and territory jurisdictions are achievable goals, but we will exercise our responsibility to the California public to maintain greater consumer protections, stringent financial surveillance, privacy enforcement, and higher producer licensing standards that may exceed our National Association's statement of intent. The focus of our effort will continue to be consumer protection and financial stability of the insurance industry through fair and impartial implementation of the law.

HARRY W. LOW
Insurance Commissioner



KEY FEATURES OF GLBA

January 2002

- The Financial Services Modernization Act of 1999 known as the Gramm-Leach-Bliley Act or GLBA became Federal law November 12, 1999.
- GLBA breaks down barriers among the banking, insurance, and securities industries and establishes a framework to cover the responsibilities of federal and state regulators.
- Traditional insurance providers will generally use the Act to offer their products through banks and other financial institutions and/or to become affiliated with a bank or other financial institution.
- State insurance departments will be the functional regulators of the insurance business activities of all financial firms engaged in the business of insurance, including banks.
- State licensing requirements for all insurers and agents remain in effect.
- The Federal Reserve Board will supervise financial holding companies established under the Act, but generally must rely upon the examinations, reports, and decisions of the functional regulators.



WORKING GROUP BRIEFING DOCUMENTS

January 2002

- Coordinated Advertising Rate and Form Review Authority (CARFRA)
- Consumer Protection
- Coordinating with Federal Regulators
- Functional Regulation
- National Association of Registered Agents and Brokers (NARAB)
Overview of NARAB
- Improvements to State-Based Systems
- National Treatment and Coordination
- Privacy
Initial Statement of Reason
Notice of Proposed Action and Notice of Public Hearing

For the most recent information and updates in CDI's GLBA Working Group activities, review our website, www.insurance.ca.gov. For information about the National Association of Insurance Commissioners, log-on to their website at www.naic.org.

Harry W. Low, Insurance Commissioner
California Department of Insurance

Contact

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Strategic Planning, Policy & Research
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Working Group Briefing Document

www.insurance.ca.gov

January 2002

Working Group Name: **COORDINATED ADVERTISING RATE AND FORM REVIEW AUTHORITY (CARFRA)**

Working Group Members: Reid McClaran, Legal, Deputy Chief Council
Sheldon Summers, Financial Surveillance

Other NAIC Working Group States: MI, PA, AL, AK, AR, CA, CT, FL, IN, KS, ME, MA, NY, NC, ND, OH, OK, OR, SC, SD, TX, WI

I. Elements

- Purpose: A unique entity organized to provide assistance to regulators in the review and approval of rate, form and advertising filings by providing recommendations to member regulators for their individual state final decision. Coordinated Advertising Rate and Form Review Authority (CARFRA) meets the needs of:
 - *Regulators* by providing assistance in the review and approval of rate, form and advertising filings;
 - *Consumers* by speeding new products to market while maintaining appropriate regulatory standards of review; and
 - *Insurers* by providing a single point of entry to submit products for review, with the certainty that a filing can be approved for multiple State use within an established number of days.
- Membership: Open to chief regulators of the fifty states, DC and American Territories; members will determine products appropriate for CARFRA treatment.
- Governance: Membership governed by a board of directors elected from and by the membership serving a two-year term.
- Funding: After establishing an operating budget, the board will assess filing companies.
- Member Responsibilities:
 - contribute staff to review pool
 - secure standardization of laws pertaining to approval of rates, forms and advertising
 - abide by time limits established
 - reject CARFRA recommendations only for good cause
 - active participation in work and decision-making
- Staffing: Authority will employ a small staff to provide support services for functions performed by members of the pool.

- Technology: Filings will use an electronic repository (probably based on System for Electronic Review and Form Filing or SERFF).

Review:

- filings made with CARFRA electronic repository
 - review team appointed from pool
 - review according to national standards with additional input from member states during course of review in a virtual office setting
 - transmittal for recommendation to CARFRA staff for transmission to chief regulator of each state company is seeking approval from
 - final approval by individual state or if rejection, articulation of reasons; and notification to filing company of final action
- Appeal: Procedure for review of decisions available to states and companies

II. Pros and Cons

- Pros
 - CARFRA acts as consulting service providing product review expertise
 - Uniform standards are established
 - Uniform review process established
 - State-based control maintained
 - Small states with limited resources will benefit from greater expertise and product regulation
- Cons
 - California has greater consumer protection provisions
 - California has higher standards for data submission and review requirements
 - Regulatory focus moves to backend market conduct which historically has been less effective
 - Being one of the largest states California would have a greater burden to supply resources

III. Concerns Regarding CARFRA

- California is a “Prior Approval” state for Property Casualty
 - References to ‘deregulation’ especially for commercial lines
 - Prop 103 requires prior approval filings for most P/C lines
 - California’s public policy favors prior approval

- Consumer Participation
 - California has statutory provision for consumer notice
 - California has statutory provision for consumer participation
 - Speed to Market needs to be balanced with consumer role
 - CARFRA in its present form lacks consumer provisions
- Uniformity must be attained at the highest level.
 - California is concerned that compromise will lead to a race to the lowest common denominator for regulatory effectiveness and consumer protections.
- State Accreditation: All states are NOT equal in ability to review all products so states participating in CARFRA must have confidence in the panel member's review
 - Employ accreditation process for CARFRA review participants
 - Encourage uniformly higher level of review
 - Accredited participating state for specific products or lines of business
- Large state participation should be included on each CARFRA review panel
 - Tend to possess greater resources
 - Heightened stake in careful review of products sold in their jurisdiction in high volume
 - At least one of the three top volume states must be included in the review
- Deference to CARFRA determination: Is appropriate but each commissioner must remain free to determine the suitability of a product for use in that state.
 - Determinations should not be binding on individual states
- CARFRA Membership: should be on a line-by-line basis
 - Due to differences among state systems
 - Line-by-line rather than all-or-nothing provides greater potential for participation
 - California may only be able to participate for some lines given our unique regulatory system
- Delegation of traditional State jobs
 - CARFRA provides for a reviewing pool consisting of participants from various states
 - Potential impact of CARFRA on California state civil service workforce is unclear
 - Legal impediments to contracting out traditional state employee services

- Department staffing and budgeting
 - Uncertainty of how many CDI staff might be allotted to the CARFRA process
 - Problems assessing staffing needs
 - Problems gaining budgetary approval
- Department fee assessment
 - California is required to base fees on actual costs
 - Uncertainty of how to assess cost of staff participation in CARFRA review panel
- CARFRA Appeals Panel allows for an appeal of the determination through CARFRA
 - Unnecessary redundancy of individual states' appeal process
 - State retains final decision on CARFRA determination
- Specific data requirements for some lines of business may be unique to California
 - Data elements may not be used or required by other states
 - Unclear how differing requirements can be accomplished within the CARFRA framework
- Public viewing requirement is mandated in California
- Market Conduct becomes an issue since CARFRA relaxes on upfront regulation moving focus to backend regulation via the market conduct exam process
 - Better consumer protection by preventing violations before they occur
 - Unsatisfactory experiences when entry standards relaxed in favor of backend regulation
 - A number of states (approximately twenty) have no market conduct programs
 - Many remaining states have minimal resources allotted to market conduct
- CARFRA is moving on an accelerated schedule
 - CARFRA launched in ten test states (AL, AR, IN, ME, MI, NY, OH, OR, PA and TX) April 2001.
 - Approved products are annuities, medicare supplements and term life. Additional products being considered.
 - First filing received June 2001



GRAMM-LEACH-BLILEY ACT (GLBA)

Working Group Briefing Document

www.insurance.ca.gov

January 2002

Working Group Name: **CONSUMER PROTECTIONS**

Working Group Members: Jim Johnson, Consumer Services & Market Conduct
Joel Laucher, Consumer Services

Other NAIC Working Group States: KS, MT, IN, AK, AZ, AR, CA, CT, DE, FL, GA, IL, IA, KY, MD, MS, MO, NV, NJ, NC, ND, OK, OR, PA, SC, SD, TX, VT, WA, WV, WI.

Background/History: Pursuant to GLBA, four federal banking agencies have promulgated consumer protection regulations that apply to retail sales practices, solicitations, advertising or offers of any insurance product by the bank or any person that is engaged in such activities at the office of the bank or on behalf of the bank.

The GLBA regulations cover such matters as:

- (1) Sales practices such as anti-tying and anti-coercion rules regarding extension of credit and buying of insurance;
- (2) Disclosures as to investment risk, uninsured (not FDIC insured) status;
- (3) Separation of banking and non-banking activities (separate the monies and personnel regarding sale of insurance from loan and other banking activities), and
- (4) Establishing a consumer grievance process.

In order for the individual state insurance departments, as the functional regulators of insurance, to retain jurisdiction of these insurance sales activities of bank insurance agents, they will have to promulgate and implement/enforce the same or stronger laws and regulations.

At this time, the NAIC working group is drafting a model “cafeteria style” law – that is, the individual states can pick and choose what they want to promulgate. The working group is also monitoring and has submitted amicus briefs in three preemption actions in West Virginia, Rhode Island and Massachusetts (see below, under *Issues*).

Timeline/Deadlines: The final consumer protection regulations issued by the four federal agencies become effective April 1, 2001. In 2001, CDI introduced AB1727 in an effort to adopt similar laws in California, which is a two-year bill and will be considered further in our 2002 session.

Issues: The banks, through their professional trade associations, are working to stop state laws on the consumer protection subjects. The reported reason for this effort is that federal regulation will be less burdensome with fewer laws and backend regulation only. In three states that already have some of these laws, certain banking associations have already challenged the laws. In the lead legal action, a West Virginia bankers association has filed a request with the Office of the Comptroller of the Currency that they deem the West Virginia laws preempted, and thereby null and void.



GRAMM-LEACH-BLILEY ACT (GLBA)

WORKING GROUP BRIEFING DOCUMENT

www.insurance.ca.gov

January 2002

Working Group Name: **COORDINATING WITH FEDERAL REGULATORS**

Working Group Members: Norris Clark, Financial Surveillance
Elizabeth Mohr, Rate Enforcement Bureau

Other NAIC Working Group States: IA, CT, NH, AK, AR, CA, CO, DC, FL, LA, MI, MS, NE, NY, OH, PA, SC, SD, TN, TX, VT, VA

Background/History:

The Working Group's objectives are:

1. Identify and address issues relating to successful cooperation between the federal functional regulators and state insurance departments.
2. Direct issues affecting substantive insurance regulation to the appropriate National Association of Insurance Commissioners (NAIC) committee.
3. Develop and monitor the implementation of regulatory cooperation agreements between federal regulatory agencies and individual state insurance departments.
4. Encourage close practical working relationships among federal and state regulators by identifying personal contacts and arranging meetings.

The Working Group has created subcommittees addressing:

1. Risk Based Capital standards to identify areas where companies might engage in regulatory arbitrage among federal and state regulators. California is a member of this subcommittee.
2. Exam procedures for underwriting and catastrophe risk categories to ensure they are adequate.
3. Federal and state regulatory philosophies regarding when and how financial and operating problems at financial institutions should be addressed.
4. A Subgroup on Financial Issues has also been created.

Timeline/Deadlines:

There are no official pending deadlines.

Issues:

In addition to those issues already mentioned, the Working Group is tracking the preemption challenges filed in West Virginia, Rhode Island, and Massachusetts. Commissioner Harry W. Low and leaders of the CDI GLBA team have held information sharing and issue oriented meetings with the Federal Reserve Board (FRB) and the Office of Currency of Comptroller (OCC). Meetings in 2001 were held between CDI and the Federal Deposit Insurance Corporation (FDIC), Federal Trade Commission (FTC), and Office of Thrift Supervision (OTS) to discuss financial solvency regulation and information sharing agreements.



GRAMM-LEACH-BLILEY ACT (GLBA)

WORKING GROUP BRIEFING DOCUMENT

www.insurance.ca.gov

January 2002

Working Group Name: **FUNCTIONAL REGULATION**

Working Group Members: Lorraine Johnson, Conservation and Liquidation Bureau, Legal

Other NAIC Working Group States: IL, TN, DE, AK, AR, CA, FL, IN, KS, MS, MO, NC, PA, SC, TX, WA, WV

California Proposed Legislation:

The GLBA enacted in November 1999, among other matters mandated that four Federal Agencies, i.e. the OCC, the OTS, the FDIC and the Federal Reserve, draft and issue regulations (by November 2000) to set forth requirements, limitations and prohibitions as the sale of insurance by or through a bank and other depository institutions (e.g. S&L's, etc.). The joint Federal regulations that were enacted in late November/early December 2000, with an effective/implementation date of April 1, 2001, set forth:

- 1) Certain prohibitions, such as, prohibiting the tying of credit to the purchase of insurance only from or through the bank, and its affiliates and agents:
- 2) The requirement of providing certain disclosures to the customer, such as, that the insurance is not FDIC or bank guaranteed, and disclosures as to the choice of insurer when obtaining a loan, etc.; and,
- 3) Requirements as to the segregation of funds and physical separation of the banking activities and from non-banking activities.

In order to retain functional regulation of the insurance sales activities of the banks and their agents, the individual state insurance departments must have similar, or, where allowed stronger consumer protective, state laws and regulations as to the insurance sales activities by banks.

At this time California is one of approximately twenty four states that does not have specific laws or regulations that address these subjects, therefore the California Department of Insurance (CDI), through a sponsor, has submitted legislation AB1727 so as to provide California consumers with full uniform regulation and protection as to the sale of insurance by banks and their agents.

Preemption Challenges Pending Before the OCC:

The CDI resulting in its participation in this working group, is monitoring the current attempts, by certain banking associations, to have preempted certain of the consumer protective laws in three states. The three states, WV, MA, and RI, already have in place, similar, but stronger, laws as to the sale of insurance by banks and their agents.

Debt Cancellation Insurance:

In 2001 the Functional Regulation working group started monitoring the OCC's proposed new rules regarding their regulation of debt cancellation contracts and debt suspension contracts. The working group urged the OCC to regulate these products, not just require disclosures. It urged the OCC to strengthen disclosure rules, prohibit certain practices and regulate rates by requiring a 60% cancelled debt/fees ratio.



Working Group Briefing Document

www.insurance.ca.gov

January 2002

Working Group Name: **NATIONAL ASSOCIATION OF REGISTERED AGENTS AND BROKERS (NARAB)**

Working Group Members: Loren Suter, Deputy Commissioner
Dennis Ward, Chief, Producer Licensing

Other NAIC Working Group States: AR, CO, AK, CA, DE, FL, IA, KS, KY, NV, NJ, NY, ND, OK, OR, PA, SC, SD, TN, TX, VT, WY

Background/History:

The Gramm-Leach-Bliley Act of 1999 (GLBA) authorizes the establishment of a new organization named the National Association of Registered Agents and Brokers (NARAB) if a majority of state insurance regulators do not implement uniform or reciprocal laws for the licensing of non-resident insurance producers. NARAB, if created, would establish uniform producer licensing laws and provide a mechanism for multi-state licensing of insurance producers; thereby, pre-empting state-unique licensing procedures and qualifications.

The National Association of Insurance Commissioners (NAIC) NARAB Working Group is charged with the following objectives:

1. Achieve reciprocity for non-resident licensing in a minimum of twenty-nine states.
2. Strive for a higher standard than required in GLBA by creating a national insurance producer system that embraces uniformity, reciprocity, and improved efficiency.

Timeline/Deadlines:

- 9/00- Express commitment to achieving reciprocity by signing a Declaration of Reciprocity
- 10/00- Develop a legislative package to achieve reciprocity and/or uniformity
- 12/00- Schedule meetings with industry and other interested parties
- 1/01- Sponsor new legislation
- 11/12/02- GLBA deadline for a majority of states to achieve reciprocity

Issues:

1. Should California endeavor to achieve reciprocity? Uniformity? Such an effort may require California to lower its licensing standards and may weaken enforcement. The effort will require the devotion of significant staff resources from the Criminal Investigations, Legal, and Legislative Branches.
2. If we decide not to pursue reciprocity or uniformity, should we continue to participate in the NARAB Working Group in 2002?
3. If we achieve reciprocity, should we agree to outsource non-resident licensing processing activities to the NAIC to facilitate electronic application filing and "one-stop-shopping" for multi-state licensing?





OVERVIEW OF NARAB
(National Association of Registered Agents and Brokers)

January 2002

I. What is NARAB?

- Established by the Gramm-Leach-Bliley Act of 1999
- A mechanism to adopt and apply uniform producer licensing requirements on a multi-state basis
- Preempts State licensing requirements

II. When Does NARAB Begin?

- November 12, 2002, unless a majority of the states (29) achieve either:
- Uniformity; or
- Reciprocity

III. NARAB Uniformity

- Qualifications for Licensure (integrity, education, etc.)
- Continuing Education
- Ethics Course
- Suitability criteria for insurance sales
- No limitations/conditions based on place of residence

IV. NARAB Reciprocity

- Issue a nonresident license without any additional requirements other than:
- A request for licensure
- The application submitted to home state
- Proof of good standing in home state
- Payment of fees

V. NARAB Board of Directors

- Seven members appointed by NAIC

- At least four members must have significant experience with the regulation of commercial lines in one or more of the twenty states with the greatest total dollar amount of commercial lines premium
- Three-year term

VI. NARAB Authority

- Establish criteria for membership (integrity, education, etc.)
- Membership fee, including annual renewal
- Impose continuing education
- Inspect/examine member's records/office
- Suspend/revoke membership
- Issue uniform license and renewal applications for multi-state licensure
- Establish a central clearinghouse for members to apply and renew licenses in multiple states
- Establish a national database for collection of regulatory information concerning activities of producers

VII. State Authority – Post NARAB

- License, supervise, and discipline insurance producers (but, must license a NARAB member)
- Prescribe and enforce consumer protection and unfair trade practices laws and regulations
- Certain State laws are preempted

VIII. Prohibited Acts by a State

- Impede or take action because of NARAB membership
- Impose higher fees on NARAB member
- Impose any licensing related qualification on NARAB member that is different from that required by NARAB
- Implement licensing/renewal procedures different from NARAB

IX. Role of the NAIC

- Supervise and oversee NARAB
- Approval of NARAB bylaws
- Examine and inspect NARAB
- Submit annual report concerning operations of NARAB to President and Congress

X. Elimination of NAIC Oversight

- NAIC oversight terminates on November 12, 2004 if:
- the NAIC has not approved the NARAB bylaws or NARAB is not conducting its required activity, or the NAIC is unable to supervise NARAB; and,
- At least a majority of the states representing at least 50% of total U. S. commercial lines premium have not satisfied uniformity or reciprocity

X. Presidential Oversight

- Upon elimination of NAIC oversight, the President of the United States, with the advice and consent of the Senate will appoint the NARAB board of directors to implement NARAB.



WORKING GROUP BRIEFING DOCUMENT

www.insurance.ca.gov

January 2002

Working Group Name: **IMPROVEMENTS TO STATE-BASED SYSTEMS**

Working Group Members: Maureen Mason, Rate Regulation
Reid McClaran, Legal, Rate Enforcement
Sheldon Summers, Financial Surveillance

Other NAIC Working Group States: OH, DC, NE, AL, AK, AZ, AR, CA, CO, FL, IL, KS, KY, MO, NY, NC, ND, OK, OR, SC, VA, WA, WV, WI

Background/History:

While not specifically required by Gramm-Leach-Bliley (GLBA), the Speed to Market working group was one of several working groups formed by the National Association of Insurance Commissioners (NAIC) to affirmatively respond to a major criticism of state regulation – that it takes too long for insurers to meet the various states’ requirements to get their products to market. This group is studying ways for the states to achieve uniformity and/or reciprocity in the approval of insurance rates and insurance policy forms.

The working group developed a proposed system for state regulation to work more efficiently. The rationale is that if the states enact uniform standards, it will no longer be necessary for each individual state to approve all of the products used within their jurisdictions. Rather, a newly established entity called the Coordinated Advertising Rate and Form Review Authority (“CARFRA”) will be responsible for review and recommendation for approval. Under this proposal qualified volunteers from state insurance departments would review the central one-stop filings. Individual states will accept that approval in their own jurisdictions unless adverse action is being taken against the company or the filing violates state law.

A CARFRA Sub-group consisting of six state members (MI, PA, NY, TX, OR & ME) was charged with filling in the details necessary to implement the proposal including establishing the process, administration and organization behind CARFRA. The Improvement to State Based Systems Sub-group consisting of five appointed state members (OH, NY, AL, CO & NE); two consumer members; two industry members and one producer member was charged with considering recommendations listed in the vision document and other suggestions for enhancing the state based filing process to increase efficiencies.

Timeline/Deadlines:

The NAIC Executive Committee approved a limited launch of CARFRA in the appointed states and four other volunteer states (OH, IN, AR, AL) with a start date of May 2001. In addition, the Speed to Market Working Group was reorganized into two separate working groups. The CARFRA Working Group was charged with developing the national standards for the CARFRA limited launch and will evaluate the success of the launch. A March 7-9 2001 interim meeting was held in Washington, D.C. to establish the national CARFRA standards for the limited launch. CARFRA was launched in May 2001 for three products, Individual Term Life, Individual Annuity and Medical Supplements. During and interim meeting held in August 2001 additional products were suggested for the CARFRA process.

The Improvement to State Based Systems Working Group is charged with implementing the recommendations contained in the Speed to Market Report related to state-based rate and form filing systems. This working group developed a checklist standards format. Individual state departments were asked to complete the form and rate filing requirements checklist using the standard format. Once completed states were to post the requirements to their Internet site. A link from the NAIC website was established for easy access to any state's checklist. The target date for completion and posting of the checklist for all states was September 2001. California has completed and posted the checklist for property/casualty lines as of October 15, 2001.

Issues:

The NAIC's efforts are dominated by small states whose issues are different from California. Achieving uniformity, or agreeing to reciprocity, assumes that some states' standards will end up being changed. For the most part, the large states have capabilities that are greater than the small states, and have developed standards commensurate with their resources and abilities.

California believes it does a better job of product review than most other states, and that any uniformity or reciprocity agreements would require our standards to descend to some lower level to which the small states might hope to rise. Many of our state laws hold us to higher standards than the uniformity being contemplated (e.g., Proposition 103 limits our flexibility regarding almost all property/casualty rates).

In addition, consumer protections are lacking in the proposal, and California has several consumer protections and participation aspects included in state law that would limit our ability to adopt the NAIC proposal as it currently stands.

Further, California consumer groups actively oppose a number of these initiatives. Still, we must measure the threat of increasing federal intervention if the states are not able to change sufficiently to react to the new national and global economy.



Working Group Briefing Document

www.insurance.ca.gov

January 2002

Working Group Name: **NATIONAL TREATMENT AND COORDINATION**

Working Group Members: Norris Clark, Financial Surveillance
Jill Jacobi, Legal, Corporate Affairs

Other NAIC Working Group States: TX, VT, AZ, AR, CA, CT, DC, FL, IL, ME, MA, MO, NE, NC, ND, OH, PA, SC, WA, WI, WY

Background/History:

National Treatment and Coordination is a National Association of Insurance Commissioners (NAIC) initiative that goes beyond the mandates of the Gramm-Leach-Bliley Act (GLBA) to: 1) create a framework of state laws, regulations and practices to streamline licensing requirements for insurers seeking to do business in multiple states [commonly referred to as Accelerated License Evaluation Review Techniques (ALERT)], and 2) enhance the current regulatory process regarding acquisitions or mergers of insurer groups whose member insurance companies are domiciled in multiple states.

The National Treatment and Coordination Working Group directly oversees the work of the ALERT Subgroup and provides guidance to the Insurance Holding Company (E) Working Group.

There are currently 50 states and the District of Columbia participating ALERT's Uniform Certificate of Authority Process (UCAA). The ALERT Subgroup is also, among other things, directing an Automated Application project, a project to minimize state-specific forms, and a best practices project.

The Insurance Holding Company (E) Working Group is directing and pilot testing a Form A Database and discussing the concept of a "Lead State" framework to minimize overlap of state's reviews of insurer acquisitions.

Timeline/Deadlines:

December 2001 is deadline for draft manual covering Form A review procedures, and "Lead State" concept: March 2002 is deadline for implementation of the Form A Database. California is on track to meet these deadlines.

Issues:

1. Preservation of state jurisdiction over federal regulation
2. Disparity of regulatory treatment/uniformity and reciprocity
3. Legality of process and proposals for implementation



Working Group Briefing Document

www.insurance.ca.gov

January 2002

Working Group Name: **PRIVACY**

Working Group Members: Sean Tracy, Strategic Planning, Policy and Research
Elizabeth Mohr, Legal, Rate Enforcement Bureau

Other NAIC Working Group States: NY, KS, AL, AZ, IL, KY, ME, MD, MO, NE, NC, ND, OR, PA, SC, TX, VA, WV

Background/History: Gramm-Leach-Bliley Act (GLBA) requires that financial institutions, including insurers, protect the privacy of consumers' nonpublic personal information. GLBA expressly permits states to enact privacy protections greater than those required by GLBA or by federal regulations. The federal agencies were required to, and did, adopt regulations by May 12, 2000. The federal rules were effective November 13, 2000, but financial institutions subject to the rules needed to comply by July 1, 2001. Most states are also extending the compliance date for insurers. In 1980, California adopted a NAIC model Insurance Information and Privacy Protection Act (CIC 791-791.27), which for the most part meets or exceeds the GLBA privacy provisions. Insurance institutions, agents, and insurance support organizations must continue to comply with this law.

Throughout 2001, the California Legislative actively considered privacy law, but were unable to reach an agreement that would advance a bill to the Governor. It is expected that this Legislative dialogue will continue in 2002.

The 1980 model privacy law has been adopted in fifteen states. For those states not having privacy laws, the National Association of Insurance Commissioners (NAIC) Privacy Working Group drafted another model, tracking the federal regulations, which the NAIC approved in September 2000. California released proposed regulations harmonizing our current privacy law with the provisions of Gramm-Leach-Bliley in December 2001.

The NAIC Privacy Working Group is now working on enforcement and implementation issues and has developed a sub-committee for Privacy Notice development.

GLBA, the federal regulations, the new NAIC draft, and the California statute generally require financial institutions to maintain a privacy policy that is clearly communicated to consumers, and require that "nonpublic personal information" not be disclosed to non-affiliated third parties unless a consumer has had an opportunity to "opt-out" of having that information disclosed. There are numerous exceptions, primarily for business purposes.

Timeline/Deadlines: Proposed regulations released in December 2001. A public hearing will be held on February 8, 2001. Following comments, CDI plans to promulgate regulations in 2002 to clarify our 1980 law and comply with GLBA provisions.

Issues: Attached is the statement of reasons for the regulatory package proposed by CDI in December 2001. Privacy law will continue to be an issue for the California Legislature to consider in 2002.



**DEPARTMENT OF INSURANCE
STATE OF CALIFORNIA
45 Fremont Street, 21st Floor
San Francisco, California 94105**

RH-01018269

December 4, 2001

INITIAL STATEMENT OF REASONS

**PRIVACY OF NONPUBLIC PERSONAL FINANCIAL
AND MEDICAL RECORD INFORMATION**

INTRODUCTION

California Insurance Commissioner Harry W. Low proposes the adoption of Title 10, Sections 2689.1-2689.24, California Code of Regulations, regarding privacy of information gathered by licensees in connection with insurance transactions.

The purpose of these regulations is to implement, interpret and make specific the provisions of California Insurance Code, Division 1, Part 2, Chapter 1, Article 6.6, Sections 791-791.27 and the privacy provisions of Gramm-Leach-Bliley Financial Services Modernization Act ¹ (GLBA), 15 U.S.C., Subchapter I, Sections 6801-6810.

California Insurance Code (CIC) Sections 791-791.27, the Insurance Information and Privacy Protection Act enacted in 1980, establishes standards for the collection, use, and disclosure of information gathered in connection with insurance transactions. This legislation adopted the National Association of Insurance Commissioners' (NAIC) 1982 model legislation, developed with input from state regulators and representatives of industry, producers and consumers to facilitate uniform privacy standards among states.

Title V of GLBA (15 U.S.C. Sections 6801-6810) requires various federal agencies and state insurance authorities to enact regulations respecting the privacy of customers and protecting the security and confidentiality of nonpublic personal information. Federal agencies have adopted implementing regulations for financial institutions subject to the jurisdiction of federal regulators. GLBA expressly permits states to enact privacy protections greater than those required by GLBA or by federal regulations.

Currently, there are no regulations that govern the collection, use, disclosure, and safeguarding of information under Sections 791-791.27 of the Insurance Code. The lack of regulations has led to some confusion on the part of licensees regarding their obligations under California and federal law. These proposed regulations are intended to clarify the procedures implementing the privacy protections set forth in the Insurance Code and to comply with the GLBA mandate, consistent with the public policy of providing maximum privacy protection permitted under these laws.

¹ P.L. 106-102, signed November 12, 1999.

SPECIFIC PURPOSE OF THE REGULATIONS AND NECESSITY

The specific purpose of each regulation and the rationale for the Commissioner's initial determination that each regulation is reasonably necessary to carry out the purpose for which it is proposed is set forth below.

Article I: General Provisions

Section 2689.1 Authority and Purpose

Section 2689.1 provides authority for the promulgation of these regulations and clarifies that these regulations are intended to implement provisions of CIC §§791-791.27 and to comply with the GLBA mandate. The rationale for adopting this regulation is to clearly indicate to the public the legal authority for this rulemaking and what provisions of the Insurance Code and federal law will be implemented.

Section 2689.2 Scope

Section 2689.2 clarifies that these regulations apply to nonpublic personal information gathered by licensees about policyholders, claimants and beneficiaries of insurance products or services used primarily for personal, family, or household purposes, and sets forth some of the circumstances under which a business policy might be subject to these regulations. Adopting this regulation is necessary to set forth clearly the persons and circumstances to which the regulations apply to assist affected persons in understanding provisions of the statute and regulations to ensure compliance.

Section 2689.3 Duty of Confidentiality and Care

Section 2689.3 makes clear that licensees have an affirmative duty to protect the confidentiality of nonpublic personal information consistent with CIC §§791-791.27, GLBA privacy provisions, and all other applicable laws regarding the privacy or confidentiality of nonpublic personal information. Adoption of this regulation is necessary to clarify the obligations imposed on licensees by these laws.

Section 2689.4 Definitions

Section 2689.4 defines several key terms referred to in these regulations that are not defined in CIC §§791-791.27 and might otherwise be unclear to affected persons. Adoption of this regulation is necessary for the public to understand provisions of the statutes and regulations. Section 2689.4(a) requires that notices of information practices be "clear and conspicuous." This section adopts the same standards for a "clear and conspicuous" notice as those in federal regulations applicable to federal agencies except it also requires that notices be understood by those with an average eighth grade educational level and achieve a minimum Flesch Score of 50. The rationale for this regulation is to achieve consistency and uniformity in privacy standards between California and federal law. The added standards are reasonably necessary to ensure that consumers will understand a licensee's information practices. Section 2689.4(b) defines "collect" consistent with the definition in federal regulations applicable to federal agencies. The Insurance Code and GLBA establish standards for the collection of nonpublic personal information in connection with insurance transactions. The rationale for this regulation is to assist consumers in understanding these provisions and to achieve uniformity in privacy standards between California and federal law.

Section 2689.4(c) defines “consumer” in similar terms to GLBA except that this regulation includes claimants and beneficiaries as examples of consumers not included in GLBA because it focused on financial institutions. This is an important definition because it clarifies the scope of the statutes. The rationale for adoption of this regulation is to assist licensees in understanding the statutes and regulations to ensure compliance.

Section 2689.4(d) defines “customer relationship” and provides examples of when a consumer is or is not a customer in accordance with federal regulations adopted by applicable federal agencies. GLBA requires that licensees provide notice of their information practices at the time of establishing a customer relationship and then annually. This regulation is necessary to clarify those provisions so that affected persons are knowledgeable about their rights and obligations.

Section 2689.4(e) defines “financial institutions” and Section 2689.4(f) defines “financial product or service” according to similar standards in GLBA and federal regulations. Since the Insurance Code focuses on licensees subject to its jurisdiction, it does not define the terms. Consequently, the terms may be unclear to licensees. However, GLBA imposes privacy obligations on “financial institutions,” including insurers. The rationale for this regulation is to assist affected persons in understanding applicable privacy laws and achieve consistency and uniformity between California and federal law.

Section 2689.4(g) defines “nonaffiliated third party” and Section 2689.4(h) defines “control” consistent with standards in GLBA and federal regulations adopted by applicable federal agencies. CIC §§791-791.27 and GLBA establish required standards for notice and disclosures of nonpublic personal information to affiliated and nonaffiliated third parties. The distinction is significant and this regulation clarifies the distinction so that consumers and licensees understand their rights and obligations. The rationale for this regulation is to achieve uniformity in privacy standards between California and federal law.

Section 2689.4(i) defines “publicly available information” in similar terms as the federal regulations adopted by applicable federal agencies. This is an important definition because CIC §§791-791.27 and GLBA establish standards governing the treatment of nonpublic personal information. This regulation specifies the type of information that is not covered by these privacy provisions so that affected persons understand their rights and obligations. The rationale for this regulation is to facilitate uniformity of privacy standards between California and federal law.

Article II: Privacy Notices; Opt Out Notices for Financial Information

Section 2689.5 Initial Privacy Notice

Section 2689.5 sets forth standards under which an initial privacy notice may be delivered within a reasonable time after a customer relationship is established, paralleling federal regulations applicable to federal agencies. The purpose of this regulation is to clarify procedures for the initial privacy notice so that licensees understand their obligations to ensure compliance.

Adoption of this regulation is necessary to comply with the GLBA mandate and achieve uniformity of privacy standards between California and federal law and regulations.

Section 2689.6 Annual Privacy Notice

Section 2689.6 adopts an annual notice requirement for customers. CIC §791.04 provides that a licensee meets requirements for notice of information practices, in the case of a policy renewal, if notice is delivered within the previous 24 months. However, GLBA (15 U.S.C. Section 6803) requires annual notice to a customer, as defined in federal regulations. Since the federal standard of annual notice is stricter, federal law supersedes. The rationale for this regulation is to conform to the mandated federal standard.

Section 2689.7 Information to be Included in Privacy Notices

Section 2689.7 clarifies information requirements for privacy notices by adopting similar standards contained in federal regulations adopted by applicable federal agencies. Often consumers are unaware of the information that is collected about them in connection with insurance transactions and do not know the uses made of the information collected. Without such information, they cannot make informed choices based on privacy concerns they may have. The purpose of this regulation is to assist the consumer in obtaining such information. The rationale for this regulation is to achieve uniformity between California and federal law. For clarification, this section also makes clear that written authorization before a licensee discloses nonpublic personal information must comply with standards set forth in CIC §791.13(a).

Section 2689.8 Form of Opt Out Notices and Opt Out Methods

Section 2689.8 clarifies opt out procedures and information requirements to be followed when a licensee is required to provide an opt out notice. CIC §791.13 sets forth the general rule that a licensee is prohibited from disclosing a consumer's nonpublic personal information without prior written authorization, subject to certain exceptions. One of the exceptions, CIC §791.13(k), permits disclosure to a nonaffiliated third party for marketing purposes, but requires that a consumer be given an opportunity to indicate he or she does not want personal information disclosed (opt out) and has given no such indication. The statute does not specify opt out procedures. However, federal regulations adopted by applicable federal agencies set forth standards for a clear and conspicuous notice that explains the right to opt out, provide examples of opt out methods, and set forth procedures for handling an opt out direction by joint consumers. This regulation adopts the federal standards. The purpose of this regulation is to make clear how to exercise a consumer's right to opt out in applicable circumstances. Adoption of this regulation is necessary to achieve uniformity in privacy standards between California and federal law.

Section 2689.9 Revised Privacy Notices

Section 2689.9 clarifies procedures for revised privacy notices. CIC §791.04 sets forth standards for notice of information practices but does not specifically set forth standards for revised notices. However, federal regulations applicable to federal agencies requires a clear and conspicuous revised notice that accurately describes a licensee's information policies and practices and provides for a new opt out form when applicable. This regulation adopts similar standards. Since federal regulations only specify a reasonable opportunity to opt out, this section interprets the provision by giving consumers 45 days to opt out of the disclosure. The rationale for this regulation is that 45 days is a reasonable amount of time for a consumer to take action and a reasonable waiting period for the licensee before disclosing nonpublic personal information about the consumer.

Section 2689.10 Delivery of Notices

Section 2689.10 clarifies standards and provides examples of adequate methods to deliver privacy notices. CIC §791.04 requires notice of information practices but does not specify methods of delivery of notices. However, federal regulations adopted by applicable federal agencies set forth standards of reasonable expectation of delivery and provide examples of both reasonable and unreasonable expectations. This regulation adopts similar standards and examples to ensure that such notification reaches consumers. The rationale for this regulation is to achieve uniformity of privacy standards between California and federal law and regulations.

Article III: Limits on Disclosures of Medical Record Information

Section 2689.11 Disclosure of Medical Record Information

Section 2689.11 clarifies the limits and conditions on disclosure of medical record information. CIC §791.13 requires a licensee to obtain prior written authorization before disclosing nonpublic personal information, defined in CIC §791.02(s) to include medical record information, subject to certain exceptions. Since GLBA was focused on financial institutions, GLBA is silent on the treatment of medical record information. The rationale for this regulation is to make clear the limits on disclosure of medical record information.

Article IV: Standards for Safeguarding Nonpublic Personal Information

Section 2689.12 General Provisions

GLBA (15 U.S.C. Sections 6801, 6805(b) and 6807) specifically requires the establishment of standards to safeguard nonpublic personal information. Section 2689.12 clarifies that the regulations in Article V are intended to establish procedures to develop and implement administrative, technical, and physical safeguards to ensure the security and confidentiality of nonpublic personal information. The regulations are similar to the federal regulations promulgated by the applicable federal agencies. Adoption of this regulation is necessary to harmonize California law and the GLBA.

Section 2689.13 Definitions

Section 2689.13 defines “customer information systems” and “service provider” consistent with standards in the NAIC 2000 model legislation, developed to track GLBA requirements for safeguarding nonpublic personal information. The purpose of defining these terms is to assist licensees in understanding the safeguarding requirements in these regulations. Adoption of this regulation is reasonably necessary to achieve consistency between states and uniformity between California law and federal law.

Section 2689.14 Information Security Program

Section 2689.14 clarifies the requirements of an information security program for licensees. CIC §§791-791.27 and GLBA establish broad standards for safeguarding nonpublic personal information, but do not specify the process. The rationale for this regulation is to comply with the GLBA mandate and achieve consistency between California law and federal law.

Section 2689.15 Objectives of Information Security Program Section 2689.15 establishes similar objectives for an information security program as in GLBA. The rationale for this

regulation is to comply with the GLBA mandate and achieve consistency between California law and federal law.

Section 2689.16 Assess Risk

Section 2689.16 implements the safeguarding process mandated by GLBA by setting standards to assess the threat of risk to the integrity of customer information and information systems. The standards parallel the standards set forth in NAIC's 2000 model legislation. Although CIC §791-791.27 and GLBA established standards for the safeguarding of nonpublic personal information, the statutes did not specify the process. This regulation implements, interprets and makes specific those provisions. The rationale for this regulation is to comply with the GLBA mandate and achieve consistency between California law and federal law.

Section 2689.17 Manage and Control Risk

Section 2689.17 implements the safeguarding process mandated by GLBA by setting standards to manage and control risks to the integrity of customer information and information systems. The standards parallel the standards set forth in NAIC's 2000 model legislation. Although CIC §791-791.27 and GLBA established standards for the safeguarding of nonpublic personal information, the statutes did not specify the process. This regulation implements, interprets and makes specific those provisions. The rationale for this regulation is to comply with the GLBA mandate and achieve consistency between California law and federal law.

Section 2689.18 Service Providers

Section 2689.18 implements the safeguarding process mandated by GLBA by setting standards to oversee service providers. The standards parallel the standards set forth in NAIC's 2000 model legislation. Although CIC §791-791.27 and GLBA established standards for the safeguarding of nonpublic personal information, the statutes did not specify the process. This regulation implements, interprets and makes specific those provisions. The rationale for this regulation is to comply with the GLBA mandate and achieve consistency between California law and federal law.

Section 2689.19 Adjust the Program

Section 2689.19 implements the safeguarding process mandated by GLBA by setting standards to monitor and adjust the information security program. The standards parallel the standards set forth in NAIC's 2000 model legislation. Although CIC §791-791.27 and GLBA established standards for the safeguarding of nonpublic personal information gathered in connection with insurance transactions, the statutes did not specify the process. This regulation implements, interprets and makes specific those provisions. The rationale for this regulation is to comply with the GLBA mandate and achieve consistency between California law and federal law.

Section 2689.20 Enforcement

CIC §§791-791.27 and GLBA impose a number of obligations upon licensees. The Insurance Code and 15 U.S.C., Section 6805(6) authorize the Insurance Commissioner to enforce these obligations. The rationale for Section 2689.20 is to clarify that the Insurance Commissioner is responsible for audit compliance and enforcement of these standards and regulations, consistent with the statutes.

Article V: Additional Provisions

Section 2689.21 Protection of Fair Credit Reporting Act

Section 2689.21 clarifies that CIC §§791-791.27 does not modify, limit, or supersede the operation of the federal Fair Credit Reporting Act (FCRA) (15 U.S.C. §§1681 et seq.). Since disclosures of certain information may give rise to obligations under FCRA, GLBA (15 U.S.C. Section 6806) expressly protects the operation of FCRA. This regulation adopts a similar standard. The rationale of this regulation is to achieve uniformity in privacy standards between California and federal law.

Section 2689.22 Nondiscrimination

Section 2689.22 clarifies that a licensee is prohibited from discriminating against a consumer for withholding disclosure authorization by denying the consumer an insurance product or service. CIC §791.13 requires prior written authorization before disclosure of nonpublic personal information, setting forth certain exceptions, including the requirement of an opt out notice to consumers before disclosing information to nonaffiliated parties for marketing purposes. It does not specify consequences when a consumer does not provide authorization or exercises the option of opting out against disclosure. The rationale for this regulation is to protect the consumer's exercise of privacy rights.

Section 2689.23 Severability

Section 2689.23 clarifies that each section of the regulations is severable. The rationale for this regulation is consistency with customary legal protections in the eventuality that a section or portion of a section or its applicability to any person or circumstance is held invalid by a court.

Section 2689.24 Effective Date

Section 2689.24 clarifies that the Insurance Commissioner intends the effective date of these regulations to be 30 days after filing with the Secretary of State. The rationale for this regulation is consistency with the rulemaking process to allow a standard reasonable transition period before the regulations take effect .

Appendix A-Sample Clauses

Appendix A provides sample clauses to assist licensees in drafting privacy notices, explaining a consumer's right to opt out of disclosures, and describing its practices to protect the confidentiality and security of customer information.

IDENTIFICATION OF STUDIES

The Commissioner has not relied upon technical, theoretical, or empirical studies or reports in proposing these regulations.

SPECIFIC ACTIONS, PROCEDURES, TECHNOLOGIES OR EQUIPMENT

Adoption of these regulations would not mandate the use of specific technologies or equipment or prescribe specific actions or procedures.

ALTERNATIVES

The Commissioner has determined that no reasonable alternative exists to carry out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

ECONOMIC IMPACT ON BUSINESS

The Commissioner has initially determined that the proposed regulations will not have a significant adverse economic impact on businesses because they are already required to comply with similar federal requirements of the Gramm-Leach-Bliley Financial Services Modernization Act (15 U.S.C., Subchapter I). The Commissioner invites interested parties to comment on whether the proposed regulations will have a significant adverse economic impact on business.

**DEPARTMENT OF INSURANCE
STATE OF CALIFORNIA
45 Fremont Street, 21st Floor
San Francisco, California 94105**

RH-01018269

December 4, 2001

**NOTICE OF PROPOSED ACTION AND
NOTICE OF PUBLIC HEARING**

SUBJECT OF HEARING

Notice is hereby given that California Insurance Commissioner Harry W. Low will hold a public hearing on February 8, 2002, at 10:00 a.m., in San Francisco, regarding the proposed adoption of regulations pertaining to privacy of information gathered by entities subject to the regulation of the Commissioner in connection with insurance transactions.

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes the adoption of these regulations (Title 10, Sections 2689.1-2689.24 of the California Code of Regulations) pursuant to well settled law that the Commissioner has "broad discretion to adopt rules and regulations as necessary to promote the public welfare." (Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d 805, 824.) and Sections 6801(b) and 6805(b)(2) and 6807 of the Gramm-Leach-Bliley Financial Services Modernization Act (GLBA) (15 U.S.C., Subchapter I). The purpose of these regulations is to implement, interpret, and make specific the provisions of California Insurance Code, Division 1, Part 2, Chapter 1, Article 6.6, Sections 791-791.27 and Gramm-Leach-Bliley Act privacy provisions (15 U.S.C., Subchapter I, Sections 6801-6810), consistent with affording individuals the maximum privacy protections permitted by those laws.

HEARING DATE AND LOCATION

A public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, with respect to the proposed regulations at the following date, time, and place:

Date and Time:	February 8, 2002 – 10:00 a.m.
Location:	State Building – First Floor Auditorium 455 Golden Gate Avenue San Francisco, California 94102

ACCESS TO HEARING ROOM

The facilities to be used for the public hearing are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify either of the contact persons (listed below) for this hearing in order to make special arrangements, if necessary.

WRITTEN AND/OR ORAL COMMENTS: AGENCY CONTACT PERSONS

All persons are invited to submit written comments to the Insurance Commissioner on the proposed regulations. Comments should be addressed to either of the contact persons for this proceeding:

Elizabeth Mohr, Assistant Chief Counsel
Mary Ann Shulman, Staff Counsel
California Department of Insurance
Rate Enforcement Bureau
45 Fremont Street, 21st Floor
San Francisco, CA 94105
Mohre@insurance.ca.gov
Shulmanm@insurance.ca.gov
(415) 538-4112
(415) 538-4133

All persons are invited to present oral and/or written testimony at the scheduled public hearing.

DEADLINE FOR WRITTEN COMMENTS

All written materials, unless submitted at the hearing, must be received by the Insurance Commissioner at the address listed above **no later than 5:00 p.m. on February 8, 2002.** Any written materials received after that time will not be considered.

Comments submitted by e-mail will be accepted and considered.

QUESTIONS REGARDING REGULATIONS

Questions regarding the regulations should be directed to either of the contact persons listed above.

INFORMATIVE DIGEST

SUMMARY OF EXISTING LAW

Existing law, CIC §§ 791-791.27, the Insurance Information and Privacy Protection Act enacted in 1980, establishes standards for the collection, use, and disclosure of information gathered in connection with insurance transactions. This legislation adopted the National Association of Insurance Commissioners' (NAIC) 1982 model legislation, which was developed with state regulators and representatives of industry, producers and consumers to facilitate uniform privacy standards among states.

Concerned with the threat to privacy posed by increased capabilities of computerized information systems, the Legislature recognized that a vast amount of confidential

personal financial and health information is gathered in connection with insurance transactions. The legislative purpose of the Insurance Information and Privacy Protection Act is to balance the legitimate information needs of the insurance industry to conduct the business of insurance with the public's need for fairness in insurance information practices, including the need to minimize intrusiveness.

Existing law, California Civil Code Section 56.265, prohibits certain persons or entities, including insurers, from disclosing individually identifiable information concerning the health of, or medical or genetic history of, a customer for use with regard to the granting of credit.

Effective July 1, 2002, California Civil Code Section 1798.85 (SB 168, Statutes of 2001) prohibits certain persons or entities from using a consumer's social security number in certain ways.

Existing law, Business and Professions Code Sections 17590-17595 (SB 771, Statutes of 2001), prohibits telephone solicitors from calling individuals on a "do not call" list established by the Attorney General not later than January 1, 2003.

Existing federal regulations (45 CFR Parts 160 and 164) implementing the Health Insurance Portability and Accountability Act of 1996¹ establish standards for the use and disclosure of protected health information. Compliance by health insurers is extended to April 14, 2003. These federal regulations permit a state to adopt more stringent privacy standards (Part 160, subpart B).

Existing law, Title V of GLBA (15 U.S.C. Section 6801, et seq.), requires various federal agencies and state insurance authorities to enact regulations respecting the privacy of customers and protecting the security and confidentiality of nonpublic personal information. Federal agencies adopted implementing regulations, establishing July 1, 2001 as the compliance date for financial institutions subject to the jurisdiction of federal regulators. GLBA expressly permits states to enact privacy protections greater than those required by GLBA or by federal regulations.

POLICY STATEMENT OVERVIEW

Currently, there are no regulations that govern the collection, use, disclosure, and safeguarding of information under Sections 791-791.27 of the Insurance Code. The lack of regulations has led to some confusion on the part of licensees regarding their obligations under California and federal law. These proposed regulations are intended to clarify the procedures implementing the privacy protections set forth in the Insurance Code and to comply with the GLBA mandate, consistent with the public policy of providing maximum privacy protection permitted under these laws.

Article I: General Provisions

Section 2689.1 Authority and Purpose

Existing law, CIC §§ 791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810, establishes standards for the collection, use, disclosure, and safeguarding of nonpublic

personal information gathered in connection with insurance transactions. Section 2689.1 clarifies that these regulations are intended to implement those provisions.

Section 2689.2 Scope

Existing law, CIC §§ 791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810, establishes standards for the collection, use, disclosure, and safeguarding of nonpublic personal information gathered in connection with insurance transactions. Section 2689.2 clarifies that these regulations apply to nonpublic personal information, as defined, about policyholders, claimants and beneficiaries of insurance products or services used primarily for personal, family, or household purposes, and sets forth some of the circumstances under which a business policy might be subject to these regulations.

Section 2689.3 Duty of Confidentiality and Care

Existing law, CIC §§ 791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810, establishes standards for the collection, use, disclosure, and safeguarding of nonpublic personal information gathered in connection with insurance transactions. Section 2689.3 makes clear that licensees have an affirmative duty to protect the confidentiality of nonpublic personal information consistent with these standards and all other applicable laws regarding the privacy or confidentiality of nonpublic personal information.

Section 2689.4 Definitions

CIC §791.04(b) sets forth mandatory standards for the required notice of information practices. 15 U.S.C. Section 6802(b)(1)(A) requires that notices be clear and conspicuous. Existing law does not define “clear and conspicuous.” However, “clear and conspicuous” is defined in the regulations adopted by the applicable federal agencies. Section 2689.4(a) adopts a similar standard, except that this regulation requires that notices be understood by those with an average eighth grade educational level and achieve a minimum Flesch Score of 50.

Existing law, CIC §§ 791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810, establishes privacy protection standards for nonpublic personal information collected in connection with insurance transactions. Existing law does not define “collect.” However, “collect” is defined in the regulations adopted by applicable federal agencies, and Section 2689.4(b) adopts a similar definition.

Existing law, CIC §§ 791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810, establishes standards for the collection, use, disclosure, and safeguarding of nonpublic personal information gathered about consumers. Although the Insurance Code does not define “consumer,” 15 U.S.C. Section 6809(9) does. Section 2689.4(c) adopts a similar definition except that this regulation includes claimants and beneficiaries as examples of consumers not included in GLBA since the federal law was focused on financial institutions rather than insurance licensees.

CIC §791.04(a) requires that licensees provide notice of information practices to applicants at the time of delivery of the insurance policy and, for policy renewals, within the previous 24 months. 15 U.S.C. Section 6803 requires that notice of information practices be made at the time of establishing a customer relationship with a consumer and not less than annually during the continuation of such relationship. Existing law does not

define “customer relationship.” However, federal regulations implementing 15 U.S.C., Subsection I, define “customer relationship” and Section 2689.4(d) adopts a similar standard and provides examples of circumstances in which a consumer is or is not a customer. In light of federal requirements for annual notice to customers, this regulation also adopts the annual requirement, consistent with the public policy of providing maximum privacy protections under these laws.

CIC §§ 791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810, establish standards governing the treatment of nonpublic personal information gathered in connection with insurance transactions. As provided in CIC §791.01, these standards apply to insurance institutions, agents, and insurance-support organizations, as defined in §791.02. Since the Insurance Code focuses on licensees subject to its jurisdiction, it does not define “financial institutions.” However, 15 U.S.C., Subchapter I, imposes privacy obligations on “financial institutions,” including insurers, as defined in Section 6809(3), and Section 2689.4(e) adopts a similar standard. For the same reason, CIC §791.02 does not define “financial product or service.” However, “financial product or service” is defined in the regulations adopted by the applicable federal agencies, and Section 2689.4(f) adopts a similar standard.

Existing law, CIC §§791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810, establishes required standards for notice and disclosures of nonpublic personal information to affiliated and nonaffiliated third parties. Although CIC §791.02 defines “affiliated” and “control,” the Insurance Code does not define the counterpart “nonaffiliated third party.” 15 U.S.C. Section 6809 defines “nonaffiliated third party” and “control” and federal regulations expand upon these definitions. Sections 2689.4(g) and (h) of these regulations respectively adopt similar standards for “nonaffiliated third party” and “control.”

CIC §791.02 and 15 U.S.C. Section 6809 define “personal information” but do not define what is public or nonpublic personal information. However, federal regulations adopted by applicable federal agencies define “publicly available information” and Section 2689.4(i) adopts this standard.

Article II: Privacy Notices; Opt Out Notices for Financial Information

Section 2689.5 Initial Privacy Notice

CIC §791.04 sets forth standards for the required notice of information practices. 15 U.S.C. Section 6803 requires delivery of an initial privacy notice at the time a customer relationship is established. Existing law does not contemplate circumstances under which the initial privacy notice may be delivered later than delivery of the insurance policy or after a customer relationship is established. However, federal implementing regulations set forth standards under which an initial privacy notice may be delivered within a reasonable time after a customer relationship is established. Consistent with federal law and regulations, Section 2689.5 adopts similar standards.

Section 2689.6 Annual Privacy Notice

CIC §791.04 provides that a licensee meets requirements for notice of information practices, in the case of a policy renewal, if notice is provided within the previous 24 months. 15 U.S.C. Section 6803 requires a clear and conspicuous notice to a customer

not less than annually, as defined in federal regulations. Since the federal standard of annual notice is stricter, federal law supersedes and Section 2689.6 adopts the annual notice requirement to conform to the federal standard.

Section 2689.7 Information to be Included in Privacy Notices

CIC §791.04(b) sets forth general standards for information required in privacy notices. Federal regulations adopted by the applicable federal agencies clarify these information requirements, providing an example of an inadequate categorization of information. Section 2689.7 clarifies information requirements by adopting a similar standard and example. CIC §791.13(a) sets forth standards for written disclosure authorization prior to a licensee's disclosure of nonpublic personal information. Section 2689.7(5) makes clear that written authorization must comply with these standards.

Section 2689.8 Form of Opt Out Notice and Opt Out Methods

CIC §791.13 prohibits disclosure of a consumer's nonpublic personal information without prior written authorization as a general rule and sets forth standards for such authorization. CIC §791.13(k) provides an exception, requiring that a consumer be given an opportunity to opt out before nonpublic personal information about the consumer is disclosed to a nonaffiliated third party for marketing purposes. Even if a consumer does not exercise the right to opt out, 15 U.S.C. Section 6802 prohibits the disclosure of an account number. Existing law does not specify opt out procedures. However, federal regulations adopted by applicable federal agencies set forth standards for a clear and conspicuous notice that explains the right to opt out, provided examples of opt out methods, and set forth procedures for handling an opt out direction by joint consumers. Adopting standards similar to federal law and regulations, Section 2689.8 clarifies opt out procedures and information requirements to be used when a licensee is required to provide an opt out notice and specifies what information is prohibited from disclosure even if a consumer does not exercise the right to opt out.

Section 2689.9 Revised Privacy Notices

CIC §791.04 sets forth standards for notice of information practices. §791.13(k) requires a licensee to provide an opportunity to opt out before disclosing nonpublic personal information about a consumer to a nonaffiliated third party for marketing purposes. Existing law does not specifically set forth standards for revised privacy notices. However, federal regulations adopted by applicable federal agencies require a clear and conspicuous revised notice that accurately describes a licensee's information policies and practices and provides for a new opt out form to the consumer. Section 2689.9 adopts these standards. Since federal regulations only specify a reasonable opportunity to opt out, Section 2689.9 interprets existing law by giving the consumer 45 days to opt out.

Section 2689.10 Delivery of Notices

CIC §791.04 sets forth standards for notice of information practices. Existing law does not specify methods of delivery of notices. However, federal regulations adopted by applicable federal agencies set forth standards of reasonable expectation of delivery and provide examples of both reasonable and unreasonable expectations. Section 2689.10 adopts similar standards and examples.

Article III: Limits on Disclosures of Medical Record Information

Section 2689.11 Disclosure of Medical Record Information

CIC §791.13 requires a licensee to obtain prior written authorization before disclosing nonpublic personal information, defined in CIC §791.02(s) to include medical record information, subject to certain exceptions. Since 15 U.S.C., Subchapter I, was focused on financial institutions which do not customarily have access to medical record information, GLBA is silent about the treatment of medical record information. Section 2689.11 is intended to make clear the limits on disclosure of medical record information.

Article IV: Standards for Safeguarding Nonpublic Personal Information

Section 2689.12 General Provisions

Existing law, CIC §§ 791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810, establishes standards for the collection, use, disclosure, and safeguarding of nonpublic personal information gathered in connection with insurance transactions. 15 U.S.C. Sections 6801, 6805(b), and 6807 require the establishment of standards to safeguard nonpublic personal information. Section 2689.12 clarifies that the regulations in this article are intended to set forth procedures to develop and implement administrative, technical, and physical safeguards to ensure the security and confidentiality of nonpublic personal information. The regulations in Article V are similar to the federal regulations promulgated by the applicable federal agencies.

Section 2689.13 Definitions

Existing law, CIC §§ 791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810, does not define “customer information systems” or “service provider.” Section 2689.13 defines these terms referenced in the regulations.

Section 2689.14 Information Security Program

Existing law, CIC §§ 791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810, establishes broad standards for safeguarding nonpublic personal information, but does not specify the process. Section 2689.14 clarifies the requirements of an information security program

Section 2689.15 Objectives of Information Security Program

Existing law, CIC §§ 791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810, establishes standards for the collection, use, disclosure, and safeguarding of nonpublic personal information gathered in connection with insurance transactions. 15 U.S.C. Section 6801(b) establishes objectives for an information security program and Section 2689.15 adopts a similar standard.

Section 2689.16 Assess Risk

Existing law, CIC §§ 791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810, establishes standards for the safeguarding of nonpublic personal information gathered in connection with insurance transactions, but does not specify the process. Section 2689.16 implements the safeguarding process by setting standards to assess the threat of risk to the integrity of customer information and information systems.

Section 2689.17 Manage and Control Risk

Existing law, CIC §§ 791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810, establishes standards for the safeguarding of nonpublic personal information gathered in connection with insurance transactions, but does not specify the process. Section 2689.17 implements the safeguarding process by setting standards to manage and control risks to the integrity of customer information and information systems.

Section 2689.18 Service Providers

Existing law, CIC §§ 791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810, establishes standards for the safeguarding of nonpublic personal information gathered in connection with insurance transactions, but does not specify the process. Section 2689.18 implements the safeguarding process by setting standards to oversee service providers.

Section 2689.19 Adjust the Program

Existing law, CIC §§ 791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810, establishes standards for the safeguarding of nonpublic personal information gathered in connection with insurance transactions, but does not specify the process. Section 2689.19 implements the safeguarding process by setting standards to monitor and adjust the information security program.

Section 2689.20 Enforcement

Existing law, CIC §§791.15, 791.17 and 15 U.S.C. Section 6805(6), authorizes the Insurance Commissioner to enforce the standards prescribed in CIC §§791-791.27 and 15 U.S.C. Subchapter I. Section 2689.20 clarifies that the Insurance Commissioner is responsible for audit compliance and enforcement of these standards and regulations.

Article V: Additional Provisions

Section 2689.21 Protection of Fair Credit Reporting Act

CIC §§791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810, establish standards for the collection, use, disclosure and safeguarding of nonpublic personal information, including financial information. Disclosure of certain information may give rise to obligations under the federal Fair Credit Reporting Act ("FCRA") (15 U.S.C. §§1681 et seq.). 15 U.S.C. Section 6806 expressly provides that GLBA does not modify, limit, or supersede the operation of the FCRA and Section 2689.21 adopts a similar standard.

Section 2689.22 Nondiscrimination

CIC §791.13 requires prior written authorization before disclosure of nonpublic personal information, setting forth certain exceptions, including the requirement of an opt out notice to consumers in certain specified circumstances. Existing law does not specify consequences when a consumer does not provide authorization or exercises the option of opting out against disclosure. Section 2689.22 is intended to make clear that a licensee is prohibited from discriminating against such a consumer by denying the consumer an insurance product or service for withholding disclosure authorization.

Section 2689.23 Severability

CIC §§791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810 establish standards for the collection, use, disclosure and safeguarding of nonpublic personal information and

these proposed regulations are intended to implement these standards. Section 2689.23 provides for the severability of each section of the regulations.

Section 2689.24 Effective Date

CIC §§791-791.27 and 15 U.S.C., Subchapter I, Sections 6801-6810 establish standards for the collection, use, disclosure and safeguarding of nonpublic personal information. Section 2689.24 clarifies that the Insurance Commissioner intends the effective date of these regulations to be 30 days after filing with the Secretary of State.

Appendix A – Sample Clauses

Appendix A provides sample clauses to assist licensees in drafting privacy notices, explaining a consumer's right to opt out, and describing its practices to protect the confidentiality and security of customer information.

COMPARABLE FEDERAL LAW

15 U.S.C. Section 6807 specifically authorizes states to provide greater privacy protections than GLBA. Therefore, the proposed regulations differ from the existing privacy provisions of GLBA (15 U.S.C., Subchapter I, Sections 6801-6810) in the following respects:

- 1) Section 2689.8 requires a California-specific opt-out and consent authorization form; GLBA simply lists what must be included in an opt-out form (15 U.S.C., Subchapter I, Section 6802)
- 2) As required by CIC 791.09, Section 2689.7 requires a licensee to make the nonpublic personal information it collects about a consumer available to the consumer with the right to request correction of inaccurate information; GLBA does not.
- 3) Section 2689.7 requires a description of the purpose for which nonpublic personal information is collected and disclosed as well as the source of the information in its notice requirements; GLBA does not (15 U.S.C., Subchapter I, Section 6803). However, the federal regulations provide that a financial institution adequately categorizes nonpublic personal information it collects and discloses if it categorizes the information according to source, and, in the case of disclosures, provides illustrative examples of the content of the information. (12 CFR Section 40.6(c)).
- 4) The proposed regulations expressly govern the treatment of nonpublic personal information about not only policyholders but also claimants and beneficiaries. Because GLBA's focus was on financial institutions, not insurers, GLBA is silent and simply defines a "consumer" as an individual who obtains a financial product or service used primarily for personal, family, or household purposes. (15 U.S.C., Subchapter I, Section 6809(9)).
- 5) Sections 2689.1-2689.24 govern the treatment of medical record information; because financial institutions typically do not have medical information, GLBA does not. (15 U.S.C., Subchapter I, Section 6809(4)).

PRE-NOTICE PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

Pursuant to California Government Code Section 11346.45, the Insurance Commissioner has not circulated this regulatory language prior to publication of this Notice because the proposed regulations do not involve a complex subject, the regulations can easily be reviewed during the comment period, and recently there has been significant public participation on the subject matter of these regulations. Over the past year, persons

interested in the substance of these regulations have provided input to the National Association of Insurance Commissioners (NAIC) and to the Department regarding the substance of these regulations. The Department has followed the legislative debate regarding recent privacy legislation. That input has been considered in the drafting of these regulations. California has a long tradition of strict privacy protections. Californian's constitutional right to privacy was recognized in 1972. CIC §§791-791.27 was enacted more than 20 years ago. Numerous other California laws provide privacy protections for California residents. Arguments for and against privacy safeguards regarding the collection and use of personal information have been extensively debated. Moreover, the Commissioner has obtained considerable input, from all affected parties, as to suggested courses of action in light of passage of GLBA.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposed regulations will not result in any new program mandates on local agencies or school districts.

COST OR SAVINGS TO STATE AGENCIES

The Insurance Commissioner has initially determined that the proposed regulations do not impose any cost on or result in any savings to any state agency.

COST TO LOCAL AGENCIES AND SCHOOL DISTRICTS/FEDERAL FUNDING

The Insurance Commissioner has initially determined that the proposed regulations will not result in any cost to any local agency or school district for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement. Nor will the proposal affect federal funding to the state.

NONDISCRETIONARY COSTS OR SAVINGS TO LOCAL AGENCIES

The Insurance Commissioner has initially determined that the proposed regulations do not impose other nondiscretionary costs or savings on local agencies

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE

The Insurance Commissioner has initially determined that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA

The Insurance Commissioner has further determined that the adoption of these regulations will have no effect on the creation or elimination of jobs in California, the creation of new businesses or the elimination of existing businesses in California, and will have no effect on the expansion of businesses in California.

COST IMPACT ON PRIVATE PERSONS OR ENTITIES

The Insurance Commissioner must determine the potential cost impact of the proposed regulations on private persons or businesses directly affected by them. The regulations propose a specific opt-out form to minimize customer confusion and maximize consumer protection. At this time, the Insurance Commissioner expects that any cost impact that a

representative private person or business would necessarily incur in reasonable compliance with the proposed action would be minimal.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

The proposal would not mandate the use of specific technologies or equipment.

IMPACT ON HOUSING COSTS

The Insurance Commissioner has initially determined that the proposed regulations will not affect housing costs.

IMPACT ON SMALL BUSINESSES

The Insurance Commissioner has initially determined that the proposed regulations will not have a significant effect on small businesses because they are already required to comply with similar federal requirements of the Gramm-Leach-Bliley Act.

ALTERNATIVES

The Insurance Commissioner must determine that no alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The proposed regulations adopt the same standards established by federal regulators and the National Association of Insurance Commissioners (NAIC), after due consideration of many alternatives, to the extent consistent with providing consumers the maximum privacy protections permitted under the law.

The agency invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

PLAIN ENGLISH

The proposal is in plain English except to the extent that technical terms could not be avoided. Those technical terms are defined in plain English.

AVAILABILITY OF TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS

The Department has prepared an Initial Statement of Reasons which sets forth the reasons for the regulations. The Initial Statement of Reasons, together with the text of the proposed regulations, and this Notice of Proposed Action are available for inspection or will be provided at no charge upon request to a contact person listed above.

ACCESS TO COPIES OF PROPOSED REGULATIONS AND STATEMENT OF REASONS

Any interested person may inspect a copy of or direct questions about the proposed regulations, the statement of reasons, the information upon which the proposal is based, and any supplemental information contained in the rulemaking file by contacting either of

the contact persons listed above. By prior appointment, the rulemaking file is available for inspection at 45 Fremont Street, 21st Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m. Monday through Friday.

AUTOMATIC MAILING

A copy of this Notice, including the Informative Digest, which contains the general substance of the proposed regulations, the Initial Statement of Reasons, and the text of the proposed regulations will automatically be sent to all persons on the Insurance Commissioner's mailing list.

AVAILABILITY OF MODIFIED TEXT OF REGULATIONS

If the regulations adopted by the Department differ from but are sufficiently related to the original text, the Department will make the modified text available to the public for at least 15 days prior to the date of adoption.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon completion, a copy of the Final statement of Reasons may be obtained by contacting a contact person listed above.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

The Initial Statement of Reasons, the text of the proposed regulations, and this Notice of Proposed Action will be published online and may be accessed through the Department's website at www.insurance.ca.gov.

HARRY W. LOW

Insurance Commissioner

By: ____/s/_____

California Department of Insurance (CDI) Record for GLBA/NAIC Participation

Since March of 2000, the CDI has released the following status reports:

- November 2000 GLBA Report
- February 2001 GLBA Report
- January 2002 GLBA Report

The NAIC officers will review the current structure of the GLBA Working Groups and their charges for 2002. California will also evaluate our participation and policy direction with GLBA matters, and currently plan to fully participate on all GLBA NAIC Working Groups.

If you would like further copies of this material, please contact our Department. Also, the entire document is available on our website at www.insurance.ca.gov.

Thank you.

Contact

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